

Introduced by Senator Wyland

February 22, 2013

An act to amend Section 4982 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 578, as introduced, Wyland. Marriage and family therapists: unprofessional conduct.

Existing law, the Licensed Marriage and Family Therapist Act, provides for the licensure or registration and the regulation of marriage and family therapists by the Board of Behavioral Sciences, and makes a violation of the law a misdemeanor. Existing law authorizes the board to deny a license or registration or to suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct, which, among other things, includes engaging in sexual relations with a current or former client within a specified period of time.

This bill would specify that unprofessional conduct includes engaging in a dual relationship, as described, with a patient that is reasonably likely to impair his or her professional judgment or lead to exploitation of the patient. The bill describes a dual relationship as a separate and distinct relationship between a marriage and family therapist and his or her patient that occurs simultaneously with the therapeutic relationship or within a reasonable period of time following the termination of the therapeutic relationship. This bill would provide that when a dual relationship occurs and cannot be avoided, a marriage and family therapist shall take appropriate professional precautions to ensure that his or her judgment is not impaired and the patient is not exploited.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4982 of the Business and Professions
2 Code is amended to read:
3 4982. The board may deny a license or registration or may
4 suspend or revoke the license or registration of a licensee or
5 registrant if he or she has been guilty of unprofessional conduct.
6 Unprofessional conduct includes, but is not limited to, the
7 following:
8 (a) The conviction of a crime substantially related to the
9 qualifications, functions, or duties of a licensee or registrant under
10 this chapter. The record of conviction shall be conclusive evidence
11 only of the fact that the conviction occurred. The board may inquire
12 into the circumstances surrounding the commission of the crime
13 in order to fix the degree of discipline or to determine if the
14 conviction is substantially related to the qualifications, functions,
15 or duties of a licensee or registrant under this chapter. A plea or
16 verdict of guilty or a conviction following a plea of nolo contendere
17 made to a charge substantially related to the qualifications,
18 functions, or duties of a licensee or registrant under this chapter
19 shall be deemed to be a conviction within the meaning of this
20 section. The board may order any license or registration suspended
21 or revoked, or may decline to issue a license or registration when
22 the time for appeal has elapsed, or the judgment of conviction has
23 been affirmed on appeal, or, when an order granting probation is
24 made suspending the imposition of sentence, irrespective of a
25 subsequent order under Section 1203.4 of the Penal Code allowing
26 the person to withdraw a plea of guilty and enter a plea of not
27 guilty, or setting aside the verdict of guilty, or dismissing the
28 accusation, information, or indictment.
29 (b) Securing a license or registration by fraud, deceit, or
30 misrepresentation on any application for licensure or registration
31 submitted to the board, whether engaged in by an applicant for a
32 license or registration, or by a licensee in support of any application
33 for licensure or registration.
34 (c) Administering to himself or herself any controlled substance
35 or using of any of the dangerous drugs specified in Section 4022,

1 or of any alcoholic beverage to the extent, or in a manner, as to be
2 dangerous or injurious to the person applying for a registration or
3 license or holding a registration or license under this chapter, or
4 to any other person, or to the public, or, to the extent that the use
5 impairs the ability of the person applying for or holding a
6 registration or license to conduct with safety to the public the
7 practice authorized by the registration or license. The board shall
8 deny an application for a registration or license or revoke the
9 license or registration of any person, other than one who is licensed
10 as a physician and surgeon, who uses or offers to use drugs in the
11 course of performing marriage and family therapy services.

12 (d) Gross negligence or incompetence in the performance of
13 marriage and family therapy.

14 (e) Violating, attempting to violate, or conspiring to violate any
15 of the provisions of this chapter or any regulation adopted by the
16 board.

17 (f) Misrepresentation as to the type or status of a license or
18 registration held by the person, or otherwise misrepresenting or
19 permitting misrepresentation of his or her education, professional
20 qualifications, or professional affiliations to any person or entity.

21 (g) Impersonation of another by any licensee, registrant, or
22 applicant for a license or registration, or, in the case of a licensee,
23 allowing any other person to use his or her license or registration.

24 (h) Aiding or abetting, or employing, directly or indirectly, any
25 unlicensed or unregistered person to engage in conduct for which
26 a license or registration is required under this chapter.

27 (i) Intentionally or recklessly causing physical or emotional
28 harm to any client.

29 (j) The commission of any dishonest, corrupt, or fraudulent act
30 substantially related to the qualifications, functions, or duties of a
31 licensee or registrant.

32 (k) Engaging in sexual relations with a client, or a former client
33 within two years following termination of therapy, soliciting sexual
34 relations with a client, or committing an act of sexual abuse, or
35 sexual misconduct with a client, or committing an act punishable
36 as a sexually related crime, if that act or solicitation is substantially
37 related to the qualifications, functions, or duties of a marriage and
38 family therapist.

39 (l) Performing, or holding oneself out as being able to perform,
40 or offering to perform, or permitting any trainee or registered intern

1 under supervision to perform, any professional services beyond
2 the scope of the license authorized by this chapter.

3 (m) Failure to maintain confidentiality, except as otherwise
4 required or permitted by law, of all information that has been
5 received from a client in confidence during the course of treatment
6 and all information about the client that is obtained from tests or
7 other means.

8 (n) Prior to the commencement of treatment, failing to disclose
9 to the client or prospective client the fee to be charged for the
10 professional services, or the basis upon which that fee will be
11 computed.

12 (o) Paying, accepting, or soliciting any consideration,
13 compensation, or remuneration, whether monetary or otherwise,
14 for the referral of professional clients. All consideration,
15 compensation, or remuneration shall be in relation to professional
16 counseling services actually provided by the licensee. Nothing in
17 this subdivision shall prevent collaboration among two or more
18 licensees in a case or cases. However, no fee shall be charged for
19 that collaboration, except when disclosure of the fee has been made
20 in compliance with subdivision (n).

21 (p) Advertising in a manner that is false, fraudulent, misleading,
22 or deceptive, as defined in Section 651.

23 (q) Reproduction or description in public, or in any publication
24 subject to general public distribution, of any psychological test or
25 other assessment device, the value of which depends in whole or
26 in part on the naivete of the subject, in ways that might invalidate
27 the test or device.

28 (r) Any conduct in the supervision of any registered intern,
29 associate clinical social worker, or trainee by any licensee that
30 violates this chapter or any rules or regulations adopted by the
31 board.

32 (s) Performing or holding oneself out as being able to perform
33 professional services beyond the scope of one's competence, as
34 established by one's education, training, or experience. This
35 subdivision shall not be construed to expand the scope of the
36 license authorized by this chapter.

37 (t) Permitting a trainee or registered intern under one's
38 supervision or control to perform, or permitting the trainee or
39 registered intern to hold himself or herself out as competent to

1 perform, professional services beyond the trainee's or registered
2 intern's level of education, training, or experience.

3 (u) The violation of any statute or regulation governing the
4 gaining and supervision of experience required by this chapter.

5 (v) Failure to keep records consistent with sound clinical
6 judgment, the standards of the profession, and the nature of the
7 services being rendered.

8 (w) Failure to comply with the child abuse reporting
9 requirements of Section 11166 of the Penal Code.

10 (x) Failure to comply with the elder and dependent adult abuse
11 reporting requirements of Section 15630 of the Welfare and
12 Institutions Code.

13 (y) Willful violation of Chapter 1 (commencing with Section
14 123100) of Part 1 of Division 106 of the Health and Safety Code.

15 (z) Failure to comply with Section 2290.5.

16 (aa) (1) Engaging in an act described in Section 261, 286, 288a,
17 or 289 of the Penal Code with a minor or an act described in
18 Section 288 or 288.5 of the Penal Code regardless of whether the
19 act occurred prior to or after the time the registration or license
20 was issued by the board. An act described in this subdivision
21 occurring prior to the effective date of this subdivision shall
22 constitute unprofessional conduct and shall subject the licensee to
23 refusal, suspension, or revocation of a license under this section.

24 (2) The Legislature hereby finds and declares that protection of
25 the public, and in particular minors, from sexual misconduct by a
26 licensee is a compelling governmental interest, and that the ability
27 to suspend or revoke a license for sexual conduct with a minor
28 occurring prior to the effective date of this section is equally
29 important to protecting the public as is the ability to refuse a license
30 for sexual conduct with a minor occurring prior to the effective
31 date of this section.

32 (ab) Engaging in any conduct that subverts or attempts to subvert
33 any licensing examination or the administration of an examination
34 as described in Section 123.

35 (ac) *Engaging in a dual relationship with a patient that is*
36 *reasonably likely to impair his or her professional judgment or*
37 *lead to exploitation of the patient. For purposes of this subdivision,*
38 *a dual relationship occurs when a marriage and family therapist*
39 *and his or her patient engage in a separate and distinct*
40 *relationship either simultaneously with the therapeutic relationship,*

1 *or within a reasonable period of time following the termination*
2 *of the therapeutic relationship. If a dual relationship occurs and*
3 *cannot be avoided, a marriage and family therapist shall take*
4 *appropriate professional precautions to ensure that his or her*
5 *judgment is not impaired and that the patient is not exploited. A*
6 *violation of this subdivision shall not be subject to Section 4983.*

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